



NATIONAL FLOOD INSURANCE PROGRAM

Bureau and Statistical Agent

W-02032

MEMORANDUM FOR: Write Your Own (WYO) Principal Coordinators,
for Dissemination to WYO Claims Managers

FROM: Joyce A. King, Director, Claims & Underwriting,
NFIP Bureau and Statistical Agent

DATE: May 1, 2002

SUBJECT: Revisions to Special Allocated Loss Adjustment Expenses –
Litigation Expense Procedures

Special Allocated Loss Adjustment Expenses (SALAE) are normally reimbursed to a Write Your Own (WYO) company on the basis of the National Flood Insurance Program (NFIP) Fee Schedule, which allows a specified fee depending on the amount of the total net paid claim (assuming the application of standard deductibles). For ready reference, the NFIP Fee Schedules are appended to this bulletin. The Federal Emergency Management Agency (FEMA) recognizes that a company will sometimes incur extraordinary expenses on a claim. When justified, these extraordinary expenses will also be reimbursed to the WYO company as special allocated expenses (SAE).

Types of SAE

A special allocated expense is defined as any incurred loss adjustment expense related to a claim other than the applicable schedule fee. FEMA has defined four types of SAE:

Type 1 - Engineering expense incurred to adjust a specific claim.

Type 2 - Adjuster expense, in excess of the applicable schedule fee, incurred to establish coverage or the property value on a specific claim, or otherwise to facilitate the adjustment.

Type 3 - Litigation expense incurred to defend a suit brought against the company on a claim under a WYO policy.

Type 4 - Cost of appraisal under the Standard Flood Insurance Policy Appraisal Clause, or cost of examination under oath.

Expenses Requiring Specific Approval

Not all special allocated expenses need specific FEMA approval before reimbursement can be made to the company:

- Expense Type 1 - Engineering Expense - WYO company is authorized to approve up to \$2,500 per claim without FIMA's approval.
- Expense Type 2 - Adjuster Expense (in excess of the applicable Schedule Fee) - WYO company is authorized to approve up to \$500 per claim without FIMA's approval.
- Expense Type 3 - Litigation Expense - WYO company is authorized to approve up to \$5,000 per claim without FIMA's approval.
- Expense Type 4 - Cost of Appraisal (implementation of the Standard Flood Insurance Policy Appraisal Clause) - WYO company is authorized to approve up to \$2,500 per claim without FIMA's approval.

Specific FEMA approval required:

- Expense Type 1 - Expense exceeding \$2,500 in the aggregate.
- Expense Type 2 - Expense exceeding the existing fee schedule and an additional \$500.
- Expense Type 3 - Expense exceeding \$5,000 in the aggregate.
- Expense Type 4 - Expense exceeding \$2,500 in the aggregate.

When more than one Type 1 or Type 4 expense is incurred on a claim, the *\$2,500 threshold* applies to all expenses of that type in the aggregate. For example:

- The company engages on the same claim a soil engineer for \$1,600 and a structural engineer for \$1,000;
- you must obtain approval for the *total type 1 expenses of \$2,500*, even though no single expense exceeded \$2,500.
- each expense is less than \$2,500, and you could transact an SAE for any one of these expenses without obtaining specific approval; and
- approval for the sum of all expenses incurred must be obtained before transacting an SAE for the second expense.

When FEMA approval is required, reimbursement of SAEs cannot be processed until they have been approved in an exact amount.

All expense requests that require FEMA approval should be accompanied with copies of the actual bill(s) and itemized time and expense sheet(s). *Also, the company must provide a brief explanation as to why approval of the expenses should be granted.*

Litigation Expenses (Type 3)

The Federal Insurance and Mitigation Administration (FIMA) requires all WYO companies to submit notification to FIMA of potential litigation against the NFIP. Please submit such documentation to the following address within 60 calendar days of being sued:

Federal Emergency Management Agency
Federal Insurance and Mitigation Administration (Legal Liaison)
500 C Street, SW, Room 430
Washington, DC 20472

Notice to FIMA should include three (3) copies of the initial court documents, such as the *Summons and Complaint*. Also within 60 calendar days, the WYO company should submit three (3) copies of supporting information about the case, such as a *Case Plan and Budget* (see attached Sample Case Plan & Budget). This information may be forwarded to the FEMA Office of General Counsel (OGC) as necessary. Additional information may be requested from the WYO company; please respond to these requests as quickly as possible to speed processing of all legal bills.

Legal bills should not be submitted to the Legal Liaison. When submitting SALAE requests for Type 3 expenses, you should submit copies of itemized (and legible) invoices to the NFIP Bureau and Statistical Agent at the address below.

Please note that neither settlement nor prelitigation claim costs will be reimbursed through this process.

Notification of all litigation against a WYO company regarding NFIP-related claims should be prompt and timely, to allow FIMA and the FEMA OGC, which has extensive expertise in NFIP-related litigation, to monitor, and, if necessary, assist in the disposition of NFIP-related legal claims. This also allows the Bureau and Statistical Agent to properly monitor the process of litigation. Monitoring will result in savings of legal expenses and also can assist policyholders in keeping their legal expenses at a minimum.

FEMA expects companies that normally employ staff counsel to respond to suits in their other lines of business will do so also in connection with their NFIP flood policies, whenever possible. In such cases these costs will be a part of the company's unallocated loss adjustment expense allowance. FEMA recognizes, however, that the engagement of outside counsel will sometimes be necessary, and that reasonable expenses relating to such outside counsel are reimbursable as Type 3 expenses. The WYO company should submit a request for a legal expense approval each time an actual bill is received.

When the urgency of responding to a Summons and Complaint makes it impractical for a company to obtain approval through normal means, the WYO company is encouraged to contact the FIMA Legal Liaison at (202) 646-4350 for further information. WYO companies must submit the above required initial litigation documentation within 60 calendar days.

How to Submit Expenses for Approval

Submit requests for approval of special allocated expenses to:

Claims Coordinator
NFIP Bureau and Statistical Agent
PO Box 310
Lanham MD 20703-0310

If special expenses of more than one type are incurred on the same claim, submit a separate request for approval for each type.

There is no particular form on which requests must be submitted. The company may use whatever format it chooses, including an ordinary letter, so long as the following information is provided. For convenience and clarity, a model format is provided.

1. Enter the company name [A], the policy number [B], the date of loss [C], and, if there is one, the claim number [D].
2. Enter the reserve amounts on the building and on contents, if any [E].
3. If you have closed the claim, enter the total building and content payments issued as the date of the initial closing [F].
4. If you have issued claim payments after the initial claim closing, enter the amounts of supplemental payments made on the building and on contents [G].
5. Enter the total amounts paid on the building and contents [H]. This will be the sum of the closing payments [F] and supplemental payments [G] under each coverage.
6. Enter the policy deductibles for the building and for contents [I].
7. Check the expense type for which approval is requested [J].

Note: If more than one type of special expense is incurred on a single claim, submit a separate request for approval (if required) for each type.

8. If the request is for interim approval of expenses incurred to date, check [K].
9. If the request is for final approval of expenses incurred to date, check [L].
10. On all requests for Type 2 expense, enter the schedule fee applicable to the claim as of the initial closing [M].
11. On all requests for Type 2 expense relating to a supplemental claim, enter the schedule fee applicable to the supplemental claim [N].

Note: This request form is not well suited to address a situation where more than one supplemental claim has been made. In such cases, prepare a request in any convenient format that gives all the information requested on the form, including separate claim payments and applicable schedule fees relating to the initial closing and to each supplemental claim.

12. At [O], for expense Types 1, 3, and 4, enter the total amount of the types of expenses incurred for the entire claim, including all supplemental claims. Also include in the expense type all expenses incurred that were previously submitted for approval. For Type 2 expense, enter only the amount of adjuster expense that relates to this request. For the initial closing, this will be the entire amount of adjuster expense incurred. For a supplemental claim, this will be only the amount of the adjuster expense relating to that particular supplemental claim. Include in the adjuster expense entered at [O] the amount covered by the applicable schedule fee.

13. On requests for Type 2 expense, enter the applicable fee [P]. Approval is not required for this amount.
14. If any portion of the expense entered at [O] was previously approved, enter at [Q] the amount so approved.
15. Enter the amount for which approval is requested [R]. This should be the amount at [O] less the amounts at [P] and [Q].
16. Provide an explanation and justification of the expense at [S] to include the reason the expense was incurred, why it was necessary, what activity or work it was for, and what effect this activity or work had on the adjustment. With respect to special adjuster expense, explain the work performed by the adjuster outside the scope of work normally required to adjust a flood loss. Attach pertinent documentation (invoice, time-and-expense billing rates, activity log, etc.). Explain any unusual circumstances thoroughly (such as multiple supplemental claims, giving claim and fee amounts for each).
17. Date [T] and sign [U] the request.
18. Enter your return mailing address [V].

Processing Expenses Subject to Approval

When a Type 2 expense is in excess of the \$500 authorized (over the fee schedule) to the company, process the schedule fee routinely and the \$500 SAE when the claim is closed. The requested amount (in excess of the \$500) should be processed only upon receipt of approval.

Example:

The adjuster expense was approved on a time-and-expense basis and totaled \$1,845.50 on a paid claim of \$64,000 with a date of loss of May 5, 1995. The applicable fee of \$1,000 and the authorized \$500 may be processed immediately. The additional \$345.50 should be processed when the approval is received.

Note: The entire amount of \$1,845.50 should be processed as a Special Allocated Expense, not just the \$345.50.

For expense Types 1, 3, 4, the entire expense amount is processed as an SAE.

Do not process different expenses in a single transaction.

Supplemental Claims

Often supplemental claims will not involve any Type 2 special allocated expense because the NFIP Fee Schedule allows a fee for adjuster expense relating to a supplemental claim. Adjuster expense up to the amount of this fee does not qualify as a special allocated expense, and approval of such expense in an amount up to the fee amount is not required.

Example:

For losses that require reopening and reassignment of the same or a different adjuster, the additional fee for the supplemental claim will be the larger of :

- (a) the CWOP fee; or
- (b) the difference between the fee determined by the entry value when the claim was initially closed and the entry value for the entire claim after the supplemental claim is concluded.

Only in the event that the adjuster expense exceeds the authorized fee of \$500 allowed under the Fee Schedule does the supplemental claim involve a special allocated expense. In this case, submit a request for approval of the special expense as explained above under "*How to Submit Expenses for Approval.*"

Please refer to the Appendices for the NFIP Fee Schedule.

Attachment

cc: Vendors, IBHS, and Government Technical Representative

Required Routing: Claims and Underwriting

Model SAE Approval Request Form

Company Name: _____ [A] _____

Policy #: _____ [B] _____ Date of Loss: _____ [C] _____

Claim #: _____ [D] _____

	Building	Contents
Reserves:	_____ [E] _____	_____ [E] _____
Initial closing claim payments:	_____ [F] _____	_____ [F] _____
Supplemental claim payments:	_____ [G] _____	_____ [G] _____
Total claim payments:	_____ [H] _____	_____ [H] _____
Policy deductibles:	_____ [I] _____	_____ [I] _____

Expense type: [J] 1 Expert 2 Adjuster 3 Litigation
4 Appraisal/Examination Under Oath

This request is for INTERIM APPROVAL of incurred expense date. A request for final approval will be required when the exact amount of the expense is known. [K]

This request is for FINAL APPROVAL. [L]

Allocated adjustment expense owed per fee schedule:

For initial closing _____ [M] _____ For supplemental _____ [N] _____

Total amount of this expense type: \$ _____ [O] _____

Deduct the applicable schedule fee (Type 2 only): - \$ _____ [P] _____

Deduct total expense amount previously approved: - \$ _____ [Q] _____

This request is for approval of this amount: \$ _____ [R] _____

Explanation of expense (attach pertinent documentation/additional comments as necessary): [S]

Date of request: _____ [T] _____ By: _____ [U] _____

Return address: _____ [V] _____

NFIP Fee Schedule
For Dates of Loss of May 1, 1997 or Later

Claim Range	Fee
Erroneous Assignment	\$40.00
Closed Without Payment (CWOP)	125.00
.01 -600.00	150.00
600.01 - 1000.00	175.00
1000.01 - 2000.00	225.00
2000.01 - 3500.00	275.00
3500.01 - 5000.00	350.00
5000.01 - 7000.00	425.00
7000.01 -10,000.00	500.00
10,000.01 - 15,000.00	600.00
15,000.01 - 25,000.00	750.00
25,000.01 - 35,000.00	900.00
35,000.01 - 50,000.00	1,200.00
50,000.01 - 100,000.00	3.0%
100,000.01 - 250,000.00	2.3%, but not less than \$3,000
250,000.01 and up	2.1%, but not less than \$5,750

Note: Based on Gross Loss

- Gross loss shall mean the agreed cost to repair before application of depreciation, deductible, or other limiting clauses or conditions.
- For the purpose of this schedule, should the loss exceed the available coverage, gross loss shall mean the total amount of coverage.
- If the claim involves salvage "buy-back," gross loss shall mean the amount of the claim before the salvage value is deducted.
- If the insured qualifies for replacement cost coverage, gross loss is determined on the basis of the entire replacement cost claim (including depreciation holdback).

NFIP ICC Fee Schedule
For Dates of Loss of June 1, 1997 or Later

Claim Range	Fee
Erroneous Assignment	\$40.00
Closed Without Payment (CWOP)	125.00
.01 - 600.00	150.00
600.01 - 1000.00	175.00
1000.01 - 2000.00	225.00
2000.01 - 3500.00	275.00
3500.01 - 5000.00	350.00
5000.01 - 7000.00	425.00
7000.01 - 10,000.00	500.00
10,000.01 - 20,000.00	600.00

Note: Based on Gross Loss

- Gross loss shall mean the agreed cost to repair before application of depreciation, deductible, or other limiting clauses or conditions.
- For the purpose of this schedule, should the loss exceed the available coverage, gross loss shall mean the total amount of coverage.
- If the claim involves salvage "buy-back," gross loss shall mean the amount of the claim before the salvage value is deducted.
- If the insured qualifies for replacement cost coverage, gross loss is determined on the basis of the entire replacement cost claim (including depreciation holdback).

Sample Case Plan and Budget

This Sample Case Plan and Budget has been developed to assist in the submission of documentation related to National Flood Insurance Program (NFIP) litigation.

To assist in the review and processing of NFIP-related litigation conducted by Write Your Own (WYO) companies, please provide the following preliminary information within 30 days. Please submit that report to FIMA's Legal Liaison at the following address; telephone calls should be directed to (202) 646-4350.

Legal Liaison
FEMA/FIMA
Room 441
500 C St SW
Washington DC 20472

Please note that FIMA does not reimburse WYO companies for the cost of education regarding the NFIP and its policies, related Federal Regulations, activities in Federal Practice and related subjects.

CASE PLAN FOR NFIP-RELATED LITIGATION
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CASE NAME

Initial Filing Date: _____
Date Notice to FIMA Achieved: _____
Expected End Date: _____

WYO INSURER

Policy No.: _____
Insured Name: _____
Claim No.: _____
Property Location: _____
Date of Loss: _____

ATTORNEY/FIRM AUTHORIZED TO DEFEND

DATE AUTHORIZED

POTENTIAL LITIGATION-RELATED ACTIVITIES

PLEADINGS: Briefly discuss all allegations in the complaint that might require your consideration as well as the affirmative defenses that would be raised.

JURISDICTION AND VENUE: Please remember that all NFIP-related litigation should be removed to Federal Court in the District where the property is located. If available, please provide comments regarding known past NFIP-related litigation in the locale, and other pertinent information.

DEFENSE THEORIES: Briefly describe all affirmative defenses that may be raised.

REGULATORY DEFENSES: Have you reviewed the regulations to determine whether there are regulatory defenses?

LIABILITY: How do you assess the defendant's liability? Please include an assessment of the strength and weakness of the opposition's claim.

DAMAGES: Discuss the potential damages (or specific damages sought). Please note your estimate regarding the value of the case, both potential settlement value and potential verdict scope.

POTENTIAL FOR SETTLEMENT: Is settlement likely? If so, can you set a potential range for settlement?

DEFENSE/LITIGATION PLAN: What is your suggested course of action for this lawsuit? Please include comments on your anticipated discovery requests and any potential depositions.

ALTERNATIVE DISPUTE RESOLUTION OPTIONS: Is mediation possible?

INVESTIGATION: Has any investigation been conducted prior to this date? What investigation do you expect to conduct, and at what stage in the litigation?

DEFENSE BUDGET: While you are not expected to anticipate all variables, please estimate all expected defense costs. Those costs should include the cost of preparation of pleadings, written discovery, and subpoenas; the cost of depositions; and any additional defense expenses consistent with your defense plan. *Please note that you will be expected to report any extreme changes in this assessment prior to and including closure.*

DEPOSITIONS OF FEDERAL EMPLOYEES: Do you anticipate the deposition of any Federal Employees, from either the Federal Emergency Management Agency (FEMA) or the Federal Insurance and Mitigation Administration (FIMA)?

AGENT ERROR: Is this an instance of pure agent error, i.e. the facts do not relate to the issuance, content, or other areas of the Standard Flood Insurance Policy (SFIP)?

ADDITIONAL INFORMATION: